(27)

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 169

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR

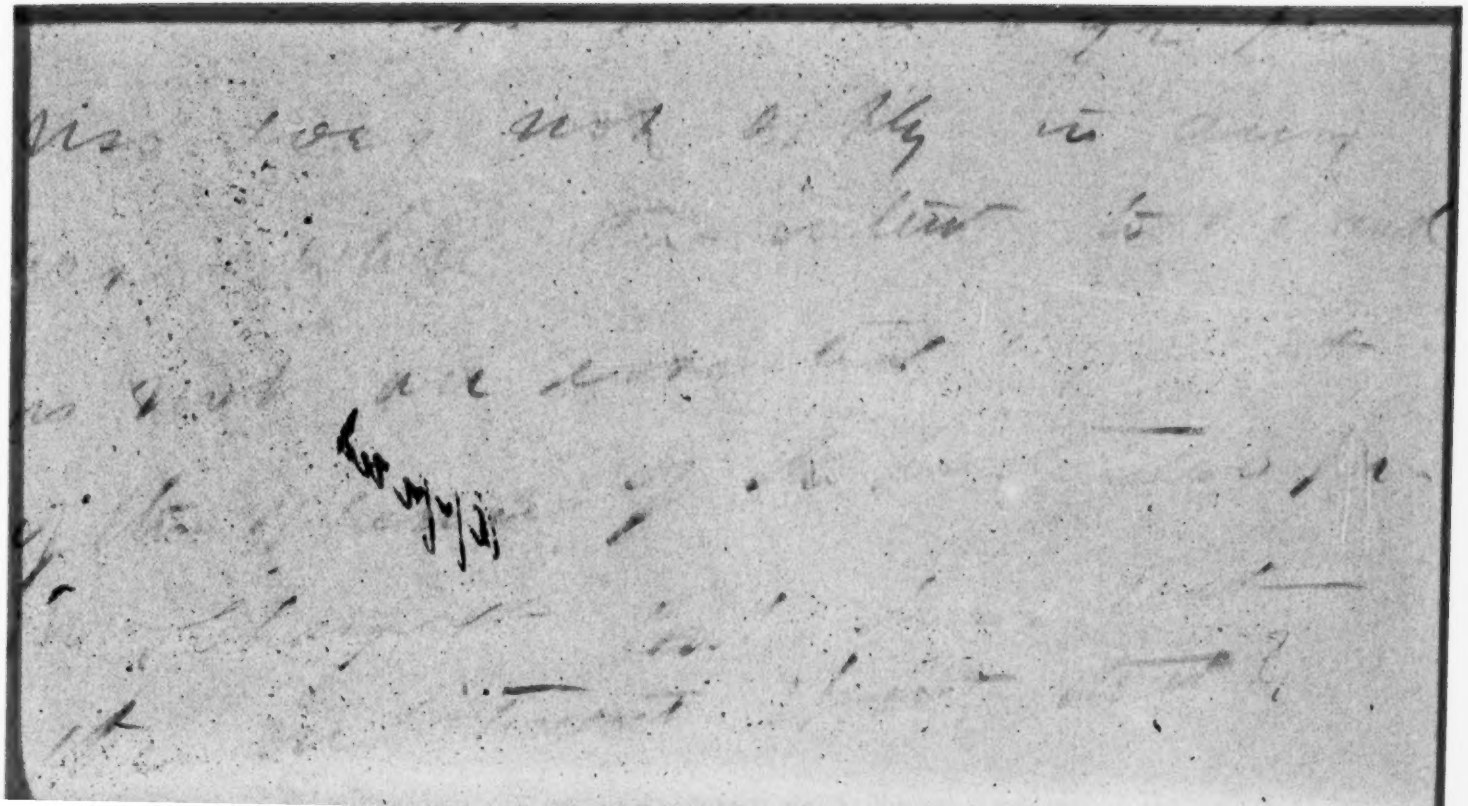
vs.

SOLOMON NOVECK

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED SEPTEMBER 9, 1924

(30603)



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 169

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR

vs.

SOLOMON NOVECK

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

INDEX

	Original	Print
Record from District Court of the United States, Southern District of New York:		
Writ of error	1	1
Indictment	4	1
Notice of motion to quash	8	4
Motion to quash	9	5
Opinion, English, J.	10	5
Judgment	17	7
Assignments of error	19	8
Petition for writ of error	21	9
Citation and service (omitted in printing)	22	9
Order extending time	24	9
Clerk's certificate	25	10

1 In United States District Court

Writ of error

(Filed July 12, 1924)

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Southern District of New York in the Second Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said District Court of the United States for the Southern District of New York, before you or some of you, between the United States of America and Solomon Novek, a manifest error hath happened to the great damage of the United States of America, as by its complaint appears.

We, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

Witness the honorable William H. Taft, Chief Justice of the United States, at the borough of Manhattan, city of New
2 York, in the Southern District of New York, on the 11th day of July, in the year of our Lord one thousand nine hundred and twenty-four.

[SEAL.] ALEX. GILCHRIST, JR.,
Clerk of the District Court of the United States of America for the Southern District of New York.

The foregoing writ is hereby allowed.

FRANCIS A. WINSLOW,
United States District Judge.

[File endorsement omitted.]

4 In United States District Court

Indictment

(Filed Nov. 5, 1923)

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The grand jurors of the United States of America, duly empaneled and sworn in the District Court of the United States for

the Southern District of New York and inquiring for said District, upon their oath present:

That heretofore, to wit, on the 13th day of March, 1920, at the Southern District of New York and within the jurisdiction of this court, Solomon Noveck, the defendant herein, did unlawfully, wilfully, corruptly, and knowingly and fraudulently commit the crime of perjury as defined by section 125 of the United States Criminal Code in that at the time and place aforesaid the defendant Solomon Noveck did (for the purpose of defrauding the United States) take an oath before one Ida C. Raskin, the said Ida C. Raskin being then and there a person and officer competent to, and authorized by law to administer an oath, to wit, a notary public in and for the county of New York, New York, that a certain written declaration and certificate, to wit, a certain paper writing purporting to be an income tax return to the collector of internal revenue for the second district of New York for the year 1919 for S. Noveck & Co., Inc., a corporation organized under the laws of the State of New York, of which corporation the said Solomon Noveck was then and there the president and the owner of about 98% of the stock in said corporation, of the amount of income tax due and owing by the said S. Noveck & Co., Inc., to the United States for the year 1919 by him subscribed, was true; in which said income tax return the said Solomon Noveck did take the said oath in a case in which the law of the United States authorized an oath to be administered, that is to say, the said S. Noveck & Co., Inc., then and there was required by law of the United States to make a return, duly sworn to and subscribed by Solomon Noveck as president of the said corporation, of the amount of income tax due and owing from said S. Noveck & Co., Inc., to the United States on its income for the year 1919; and the said Solomon Noveck then and there did falsely, corruptly, knowingly, unlawfully, wilfully, and contrary to such oath report, state, and subscribe (1) certain matters, namely, that the amount of income tax due and owing by S. Noveck & Co., Inc., to the United States for the year 1919 was $1,484.84, (2) and that the total net income from the business of S. Noveck & Co., Inc., received by the said S. Noveck & Co., Inc., amounted to $16,251.66, and the matters so sworn to and subscribed by him, the said Solomon Noveck, were material matters and were matters which by law of the United States the said Solomon Noveck was required to truly state and return under oath to the collector of internal revenue for the second district of New York as heretofore described, and the said Solomon Noveck then and there did not believe the said matters so stated by him to be true and then and there well knew that they were false.

Whereas, in truth and in fact, as the defendant Solomon Noveck then and there well knew, the amount of income tax due and owing by the said S. Noveck & Co., Inc., to the United States for the year 1919 was an amount greatly in excess of the sum of $1,484.85, to wit, approximately $45,664.91, and that the amount of the total net income from the said business received by the said S. Novek & Co.,

Inc., for the year 1919 was an amount greatly in excess of the amount of $16,251.66, to wit, approximately $124,127.13; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (section 125, U. S. C. C.).

6 SECOND COUNT

And the grand jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on the 15th day of March, 1921, at the Southern District of New York and within the jurisdiction of this court Solomon Noveck, the defendant herein, did unlawfully, wilfully, corruptly, and knowingly commit the crime of perjury as defined by section 125 of the Criminal Code of the United States in that at the time and place aforesaid the defendant Solomon Noveck did take an oath before one Ida C. Raskin, the said Ida C. Raskin being then and there a person and officer competent to and authorized by law to administer an oath, to wit, a notary public in and for the county of New York, N. Y.; that a certain written declaration and certificate, to wit, a certain paper writing purporting to be an income tax return to the collector of internal revenue for the second district of New York for the year 1920 for S. Noveck & Co., Inc., a corporation organized under the laws of the State of New York and of which corporation the said Solomon Noveck was then and there the president and the owner of about 98% of the stock in said corporation, of the amount of income tax due and owing by the said S. Noveck & Co., Inc., to the United States for the year 1920 by him subscribed, was true; in which said income tax return the said Solomon Noveck did take the said oath in a case in which the law of the United States authorized an oath to be administered, that is to say, that the said S. Noveck & Co., Inc., then and there was required by law of the United States to make a return, duly sworn to and subscribed by Solomon Noveck as president of the said corporation, of the amount of income tax due and owing from said S. Noveck & Co., Inc., to the United States on its income for the year 1920; and the said Solomon Noveck then and there
7 did falsely, corruptly, knowingly, unlawfully, wilfully, and contrary to such oath report, state and subscribe (1) certain matters, mainly that the amount of income tax due and owing by said S. Noveck & Co., Inc., to the United States for the year 1920 was $844.92, (2) and that the total net income from the business of S. Noveck & Co., Inc., received by the said S. Noveck & Co., Inc., amounted to $10,449.21, and the matters so sworn to and subscribed by him, the said Solomon Noveck, were material matters and were matters which by law of the United States the said Solomon Noveck was required to truly state and return under oath to the collector of internal revenue for the second district of New York as heretofore described; and the said Solomon Noveck then and there did

not believe the said matters so stated by him to be true and then and there well knew that they were false.

Whereas in truth and in fact, as the defendant Solomon Noveck then and there well knew, the amount of income tax due and owing by the said S. Noveck & Co., Inc., was an amount greatly in excess of the sum of $844.92, to wit, approximately $7,635.99, and that the amount of the total net income from the said business received by the said S. Noveck & Co., Inc., for the year 1920 was an amount greatly in excess of the amount of $10,449.21, to wit, approximately $40,413.87; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (section 125 U. S. C. C.).

WILLIAM HAYWARD,
United States Attorney.

[File endorsement omitted.]

1923:
Nov. 14. Deft. pleads not guilty; bail, $20,000.
1924:
Apr. 15. Filed motion to quash.
Jun. 10. Motion argued; English, J.
Jun. 13. Motion to quash sustained as to count one. Count one dismissed; English, J. Overruled as to count two; Geo. W. English, D. J.

8 In United States District Court, Southern District of New York

UNITED STATES OF AMERICA VS. SOLOMON NOVECK, DEFENDANT

Notice of motion to quash

SIR: Please take notice that on the 24th day of March, 1924, at 10.30 a. m., or as soon thereafter as counsel can be heard, I shall appear in room 331, before one of the judges of this court, holding criminal term thereof, and move the court on behalf of the defendant to quash the indictment; copy of said motion is hereto attached and served on you.

Dated New York, March 17, 1924.

Yours, etc.

HARRY KOPP, *Attorney for Defendant,*
Office & P. O. Address, 51 Chambers Street,
Manhattan Borough, New York City.

To: Hon. WILLIAM HAYWARD,
United States Attorney,
Old Post Office Building, New York City.

9 In United States District Court

[Title omitted.]

Motion to quash indictment

(Filed April 15, 1924)

And now comes Solomon Noveck, the defendant in the above entitled case, by his attorney, Harry Kopp, and moves the court to quash each and every count of the indictment on the following grounds:

1. That the oath taken by the defendant as prescribed by the Treasury Department was not required by law.

2. The items alleged to be sworn to in the income tax report were as to matters upon which the court required no oath and are therefore immaterial.

3. That the examination of the income tax report made the subject matter of this indictment, and necessarily a part thereof, shows that both the items alleged to have been sworn to falsely, to wit, net income and tax due, were correctly reported.

4. That no perjury can be predicated upon immaterial matters, and both items, to wit, the net income and tax due, are mere mathematical conclusions and therefore immaterial.

10 5. The indictment fails to meet the requirements of the statute in that it does not fairly furnish the defendant such description of the offense as will enable him to make a defense or avail himself of the plea of a conviction or acquittal against further prosecution for the same offense.

6. The first count of the indictment charging the defendant with perjury on March 13th, 1920, is barred from prosecution by the statute of limitation.

HARRY KOPP, *Attorney for Defendant.*

[File endorsement omitted.]

11 In United States District Court

[Title omitted.]

Opinion

(Filed June 13, 1924)

Appearances: William Hayward, Esq., United States attorney, for the Government; DuBois J. Gillette, Esq., assistant U. S. attorney, of counsel. Kopp, Markewich & Pearlman, Esqrs., attorneys for the defendant; Harry Kopp, Esq., of counsel.

12 ENGLISH, *J.*

The COURT. I am passing upon a plea in abatement to No. C-35-875, Government against S. Noveck & Company, Inc., and

To this indictment there has been filed an abatement, and in support of that the question of the statute of limitations has been raised.

That, as the court remembers, is a simple, plain question. All of the necessary allegations in the indictment are there, and upon the face it is contended by the defendants that they make a case which has been barred by the statute of limitations. There is no other question raised, as I recall.

The indictment is based upon the law that has developed into its present status from the old original statute of 1790, as amended by the act of the 17th of November, 1921. The act of November 17th, 1921, is an amendment to what may properly be called a general statute; that is, a statute or law which applies to all cases coming within the class or classes of cases described or defined by it, except where some special or specific provision of law provides to the contrary, and/or subsequently enacted, with some special or
13 specific other purposes in the mind of the legislative body enacting it.

The act of November 23rd, 1921, the act which is pleaded in this motion in abatement, is, as by its terms indicated, and was by Congress passed, for the simple, sole purpose to govern in cases brought for alleged violation of the internal revenue laws, which is only one branch of the revenue system here, one branch of the source from which revenues are derived. It is apparent that the legislators had in mind the specific purpose of requiring prosecutions for its violation, or its alleged violation, if any to be brought within the time or times prescribed by it according to the character of the offense.

The court is not unmindful of the suggestions of counsel that Congress in passing this act of November 23rd, 1921, did not intend to limit the time within which violations of that statute might be brought to the period therein prescribed, for the reason that the audit that was then in progress and that would subsequently be carried on would require a time in discovering violations of that law beyond the period within which it would be possible by the
14 limitations of that act that prosecution might be brought and successfully pursued. That, I think, probably will be the effect of that law; but it is what Congress has said, and they are the last ones to be informed what the law is with regard to this particular case. It is therefore the judgment of this court that the act of July 15th, 1884, as amended by the act of November 23rd, 1921, is a limitation on or supersedes the amended act, the amendment of which was November 17th, 1921, and the only conclusion in my mind is that the plea in abatement is properly interposed, and is therefore held to be a bar to the prosecution on the ground of the statute of limitations.

I might observe that in reaching that conclusion I have followed what I have observed and understand to be the general principle that a special law, or a law designated by the legislative body enacting it to operate as a limitation or modification from the rule of action to be followed concerning the matter about which there has

been legislation, supersedes or shall be a limitation upon any general statute that otherwise might govern; especially is that true
15 when the special act has been passed and become operative at a date subsequent to the general act. The plea in abatement is good.

Mr. GILLETTE. Do you care to dispose of the first count in the perjury indictment in United States v. Solomon Noveck?

The COURT. In the second indictment of United States v. Solomon Noveck I have denied the motion to quash on both counts. The plea in abatement was not interposed. If a plea in abatement was interposed in the first count, the decision would be the same.

Mr. GILLETTE. The motion to quash as to the perjury indictment is denied?

The COURT. Yes; and the plea in abatement to the first count would be good, as to the first count in the perjury indictment, as I remember it.

Mr. GILLETTE. The first count in the perjury indictment involved construction of statute of limitations.

The COURT. If the first count of the perjury indictment United States v. Solomon Noveck comes within the rule that the court has just announced the motion to quash would therefore be
16 sustained as to that count of that indictment, but overruled as to the other that comes within the period prescribed by the act.

17 In United States District Court

[Title omitted.]

Judgment

(Filed July 3, 1924)

Upon reading and filing the indictment herein, consisting of two counts, found by the grand jury for the Southern District of New York in November, 1923, against the defendant, Solomon Noveck, charging him with perjury in swearing falsely to two income tax returns of S. Noveck & Company, Inc., on March 13th, 1920, and March 15th, 1921, respectively, and the notice of motion to quash the said indictment on the ground, among others, that as to the first count more than three years had elapsed since the commission of the alleged perjury on March 13th, 1920, before November, 1923, the date of the said indictment, and after hearing Harry Kopp, of counsel with Kopp, Markewich & Perlman, attorneys for the said defendant, in support of the said motion, and Dubois J. Gillette, assistant United States attorney, of counsel with William Hayward, Esq., United States attorney on June 10th, 1924, and due deliberation having been had thereon, and thereafter the court having delivered its opinion and decision thereupon on June 13th,
18 1924, in which it finds that the said motion to quash as to the first count in the said indictment should be granted:

Now, on motion of Kopp, Markewich & Perlman, attorneys on behalf of the said defendant, Solomon Noveck, and William Hayward, Esq., United States attorney, being opposed, it is hereby

Ordered and decreed that the said motion to quash the said indictment as regards the first count therein be and it hereby is granted and that the said first count of the said indictment herein against said Solomon Noveck be and it hereby is dismissed; and it is further

Ordered and decreed that as regards the second count of the said indictment herein the said motion to quash be and it hereby is denied.

Enter.

GEORGE W. ENGLISH, *U. S. D. C. J.*

[File endorsement omitted.]

19 In United States District Court

[Title omitted.]

Assignments of error

(Filed July 12, 1924)

The United States of America, in connection with its petition for a writ of error, make the following assignments of error which they allege occurred in the decision of the court in sustaining the motion to quash the first count of the indictment herein, to wit:

1. The court erred in sustaining the motion to quash the first count of the indictment herein.

2. The court erred in quashing the first count of the indictment herein.

3. The court erred in holding as it did in sustaining the motion to quash the first count of the indictment herein that the act to amend section 1044 of the Revised Statutes of the United States relating to limitations in criminal cases, being the act of November 17, 1921, was not applicable to the offense charged in the first count of the indictment herein.

The United States of America aforesaid, plaintiff-in-error, prays that the decision aforesaid and the order entered thereon for the errors aforesaid in the record and proceedings herein may be reversed and altogether held for nothing, and that the plaintiff-in-error may be restored to all things which it has lost by reason

20 of said decision and order and judgment and that the District Court of the United States for the Southern District of New York be directed to vacate and set aside said order and judgment and to compel the defendant-in-error to plead to the indictment herein and for such other and further relief as to the court may seem proper.

Dated July 11th, 1924.

WILLIAM HAYWARD,
United States Attorney for the Southern District of New York, Attorney for Petitioner.

[File endorsement omitted.]

21 In United States District Court

[Title omitted.]

Petition for writ of error

(Filed July 12, 1924)

Now comes the United States of America, by its attorney, William Hayward, United States Attorney for the Southern District of New York, and complains that in the record and proceedings had in this cause and in the judgment quashing the first count of the indictment herein and dismissing the said count a manifest error hath happened, as well appears in the assignment of errors herewith submitted. The United States of America prays for the allowance of a writ of error and for such other orders and processes as may cause the same to be corrected by the Supreme Court of the United States.

Dated New York, July 11, 1924.

WILLIAM HAYWARD,
United States Attorney for the Southern District of New York, Attorney for petitioner.

[File endorsement omitted.]

22-23 [Citation in usual form showing service on Harry Kopp, filed July 12, 1924, omitted in printing.]

24 In United States District Court

[Title omitted.]

Order extending time

(Filed Aug. 8, 1924)

Upon the motion of William Hayward, United States attorney for the Southern District of New York, and upon the consent of Harry Kopp, attorney for defendant, Solomon Noveck, it is hereby

Ordered that the time within which to certify the record on appeal and file same with the clerk of the Supreme Court of the United States is extended to and including the 15th day of September, 1924.

Dated New York, N. Y., August 6, 1924.

WILLIAM HAYWARD,
U. S. Attorney and Attorney for Plaintiff.
HARRY KOPP,
Attorney for Defendant.

So ordered, Aug. 7, 1924.

GEO. W. MCCLINTER,
U. S. District Judge.

25 In United States District Court

Clerk's certificate

I, Alexander Gilchrist, jr., clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, this sixth day of September, in the year of our Lord one thousand nine hundred and twenty-four, and of the independence of the said United States the one hundred and forty-ninth.

[SEAL.] ALEX. GILCHRIST JR., *Clerk.*

(Endorsed on cover:) File No. 30603. S. New York, D. C. U. S. Term No. 169. The United States of America, plaintiff in error, vs. Solomon Noveck. Filed September 9th, 1924. File No. 30,603.